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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 787

RICHARD L. JONES, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

BRIEF FOR THE PETITIONER IN REPLY TO BRIEF OF THE UNITED STATES

FRED W. SHIELDS
1620 Eye Street, N. W.
Washington 6, D. C.
Attorney for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Respondent, in its argument, states that, on the facts pertinent to petitioner's case and as a matter of plain statutory application and construction, petitioner is not entitled to the retired pay benefits prescribed by Paragraph 4, Section 15 of the Pay Readjustment Act of 1942, c. 413, 56 Stat. 359 (pp. 5, 6 Respondent's Brief).

It then disregards the actual provisions of the Temporary Promotions Act of 1941, 55 Stat. 603, as amended by Section 10 of the Act of February 21, 1946, 60 Stat. 26, just as did the Court below, and dis-

cusses instead only the provisions of the original 1941 Act before its amendment. It says in this connection:

> "Section 10(a) of that act specifically provided that petitioner's temporary appointment as an officer did terminate on the date of his release from active duty and that, upon the termination of his temporary status, he did assume his 'permanent status', *i.e.*, his permanent enlisted status as a chief quartermaster, retired." (p. 6 Respondent's Brief.)

The short answer to this is that the section does not so provide, instead the controlling language in Section 10(a) reads as follows:

> "* * * and those *of the retired list* and of the respective reserve components, including the Fleet Reserve and the Fleet Marine Corps Reserve, shall have when returned to their inactive status, the highest grade and rank in which, as determined by the Secretary of the Navy, they served satisfactorily under a temporary appointment. * * *"
> (Emphasis supplied.)

Respondent next states that petitioner's claim to the more remunerative benefits of Paragraph 4 of Section 15 of the Pay Readjustment Act of 1942, *supra*, is plainly without merit; this portion of the statute it says, applies only to officers of the Regular Navy "hereafter retired". In support of this statement, it cites *Davidson* v. *United States*, 124 C. Cls. 533 (pp. 6, 7, Respondent's Brief). At this point, it may be emphasized that the petitioner's temporary appointment as a Lieutenant Commander was a temporary appointment in the *Regular Navy*, and not in any of the Reserve components of the Navy. As an officer on the retired list of the Regular Navy, he presently receives every benefit, social and otherwise, provided for perma-

penily commissioner officers of the Regular Navy except the pay here claimed. Further, the Court below cited *Davidson* v. *United States*, *supra*, as well as *Sherfey* v. *United States*, 141 C. Cls. 397, in support of the proposition that the petitioner had been re-retired in October, 1946, "When he was returned to the retired list of the Regular Navy following his wartime service." (Appendix, p. 3a.) In those cases, the Court had held that the release to inactive status of a retired officer after his recall to active duty during World War II was re-retirement within the meaning of Paragraph 4, Section 15 of the Pay Readjustment Act of 1942, *supra*.

Finally, respondent says the decision of the Court below is not at variance with the legislative history of the 1946 amendment to the Temporary Promotions Act of 1941, *supra* (p. 7 Respondent's Brief). It is is interesting to note that the court below held in this connection "we must agree with plaintiff that the legislative background of the February, 1946 amendment to the Temporary Promotions Act of 1941, accomplished by P. L. 305, reveals an intent that re-retired enlisted men should benefit from having held temporary officer appointments *just as do temporarily advanced permanent officers.* * * *" (Emphasis added.) It is difficult to see how the Court below could have held otherwise in view of the legislative history which was cited in support of petitioner's interpretation of the amendatory 1946 act. Temporarily promoted regular officers receive the pay here claimed. Certainly the respondent in the Court below did not attempt to argue otherwise and it does not point out any portion of the legislative history of the act which supports its position. Instead, it makes a broad statement that is con-

trary to the finding of the Court below and completely unsupported evidentially.

In interpreting an act of Congress, it is appropriate to consider its purpose and its legislative history. *United States* v. *Turley*, 352 U.S. 407, 413. Nor should the court refuse to give effect to the purpose of the Congress where it is clear even though it had not used the choicest words to describe its purpose. *United States* v. *Union Pacific Railroad Co.*, 253 U.S. 112, 117, 118. The legislative history of a statute is frequently a most fruitful means of instruction as to its proper interpretation. *Flora* v. *United States*, 362 U.S. 145, 151. Here petitioner has pointed out the specific language of the statute which supports his contention that upon release to inactive service he *was to be placed on the retired list* with the highest grade and rank, in which, as determined by the Secretary of the Navy, he had served satisfactorily under a temporary appointment. There is nothing in this language which in any way indicates that the Congress intended that an individual such as the petitioner should be reverted to a permanent enlisted status. *It did not say so and it changed the earlier act which had so provided.*

Moreover, the legislative history was discussed in detail by petitioner in the Court below, as well as in his brief in this court. Respondent has at no time *even attempted to discuss* the legislative materials referred to by petitioner, either here or in the Court below. The legislative history definitely establishes that it was the intention of the Congress to give enlisted men who were temporarily promoted to commissioned rank the same benefits which permanently commissioned regular officers of the United States Navy received on retirement by virtue of temporary advance-

ments in rank which they had received.' It is difficult to see how the petitioner could more fully and more definitely establish his right to the retired pay claimed for not only do the provisions of the statute so provide, but the legislative history establishes that the Congress so intended.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for grant for certiorari should be allowed.

FRED W. SHIELDS
1620 Eye Street, N. W.
Washington 6, D. C.
Attorney for Petitioner